

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DECLARATION

Case No. 19-CR-227

JOSEPH BONGIOVANNI,
PETER GERACE, JR.

Defendants.

STEVEN M. COHEN, being duly sworn, deposes and says:

BACKGROUND

1. Declarant is the attorney presently retained to represent Defendant, Peter Gerace, Jr. This declaration is in support of Mr. Gerace's motion pursuant to 18 U.S.C. § 3145 (a)(2).
2. On February 25, 2021, Defendant was indicted by a Federal Grand Jury in five (5) counts of a Second Superseding Indictment, with codefendant Joseph BonGiovanni.
3. On March 1, 2021 Defendant was arrested on the indictment warrant during a vacation in Florida and arraigned by United States Magistrate Judge Alicia O'Valle in the United States District Court for the Southern District of Florida on March 2, 2021.
4. Magistrate O'Valle released Defendant on conditions pursuant to 18 U.S.C. § 3142 (3)(a). (See Docket 93, Rule 5(c) (3) documents, including Condition of Bond and Order of Removal; *see also* Transcript of Proceedings, March 2, 2021, attached hereto as Exhibit "A").

5. Pursuant to the Conditions of Bond and Order of Removal, among other conditions Defendant was ordered to refrain from the use of alcohol, participate in Home Detention, and stay away from his business, Pharoah's Gentlemen's Nightclub, located at 999 Aero Drive, Cheektowaga, New York.
6. On April 14th Defendant, by way of his original attorney Joel L. Daniels, made a Motion for Review of the terms and conditions of his release, specifically requesting that he be allowed to be physical present at his business to attend to various duties which including any requisite banking transactions. (See Notice of Motion, filed March 25, 2021, attached hereto as "Exhibit B".)
7. Assistant United States Attorney Joseph M. Tripi responded on behalf of the United States Attorney's Office, requesting denial of the request to alter release terms and conditions.
8. The Hon. John L. Sinatra, Jr. heard oral argument in the United States District Court for the Western District of New York on April 14, 2021. (*See generally*, Transcript of Proceedings, April 14, 2021, attached hereto as "Exhibit C").
9. In reviewing the terms and conditions imposed upon Defendant's release, the Court weighed the infringement of Defendant's constitutional rights against his potential for danger and/or risk of flight.
10. The Court specifically determined, "(I) find that the combination of conditions previously imposed is not the least restrictive combination of conditions to reasonably assure the safety of others in the community. An in particular, I find that the condition that Mr. Gerace stay away from Pharoah's Gentlemen's Club at 999 Aero Drive, Cheektowaga, is

more restrictive than necessary, as stated, to reasonably assure the safety of others and the community.” (*See*, Transcript of Proceedings, April 14, 2021, at 20-21).

11. The Court altered the terms and conditions to provide for Defendant’s physical access to his business from 7:30 A.M. until 10:30 A.M., ordering that Defendant was to be alone in the building, and precluding any contact with any other employees of Pharoah’s or any individuals effectuating product deliveries. (*See*, Transcript of Proceedings, April 14, 2021, at 21).
12. Upon information and belief, Defendant has remained on pretrial services with United States Probation Officer Michael Macalusco and has remained compliant with all terms and conditions of release.

PHAROAH’S GENTLEMEN’S CLUB

13. Defendant has been the owner of Pharoah’s Gentlemen’s Club since 2018 and has been employed there for over fifteen (15) years.
14. Pharoah’s has approximately seventy employees which include dances, bartenders, security personnel, servers, kitchen help and floor managers.
15. As the owner of the club, Defendant would generally engage in regular tastings of various new brands of alcohol that may be purchased and served by the club, as well as seasonal tastings of new menu items prepared within the kitchen at Pharoah’s.
16. The condition imposed precluding Defendant’s presence at the club in the presence of other people has prevented him from the ability to participate in these meetings which occur in the ordinary course of business. Furthermore, the preclusion of the consumption of alcohol has restricted his ability to test product that would be purchased for resale,

another regular function of running the club which occurs in the ordinary course of business.

17. The club is also undergoing substantial reconstruction including, but not limited to, the installation of new booths, bars, flooring, seating areas, stages, and new pavement in the parking lot which reconstruction is estimated to cost hundreds of thousands of dollars. (Annexed hereto as Exhibits "D" and "E", please find estimates for portions of these renovations.)
18. The currently imposed conditions of bail have precluded Defendant from oversight of construction and the ability to view and select products based upon their potential appearance within the club.
19. Defendant has also been unable to respond to the club when issues have arisen with malfunctioning equipment and immediately resolve any issues to ensure continuation of standard business operation. In the event of a delivery, Defendant is forced to vacate the premises to comply with the pretrial supervision orders and cannot return to his business until they have completed the delivery precluding him from the ability to check the delivery and ensure everything that was ordered was delivered.
20. For the entirety of his ownership of Pharoah's, Defendant has held employee meetings every three (3) months, which generally include his management staff as well as security and bartenders.
21. The number of employees who would normally be in attendance during this type of staff meeting would exceed thirty (30) people, rendering his inability to meet with them at his

residence, although it should be noted that these employees are able to come and go to Defendant's residence despite his inability to meet with them at his business.

EVIDENCE OF THE PENDING CHARGES

22. On or about April 5, 2021, the United States Attorney's Office turned over voluminous discovery materials which include large scale investigations spanning over the course of a decade.
23. A thorough review of the discovery materials has provided only documentation of a single sale of marijuana to an undercover officer in 2018 by an employee of Pharoah's, and two undercover controlled purchases of narcotics by employees of Pharoah's in 2015. Neither contained evidence linking Defendant to this conduct.
24. It should be further noted that although the employees that sold narcotics conducted initial sales at Pharoah's, all subsequent sales were effectuated at alternate addresses which tends to indicate that these employees feared ramifications for conducting any illegal transactions at Pharoah's in violation of their employment contracts.
25. Although two (2) search warrants were executed both at Defendant's home on Lexor Lane in Clarence, New York, and at Pharoah's Nightclub, there was no evidence recovered which would substantiate any claims made against Defendant in the Indictment.
26. Although there are thousands of documents pertaining to multiple investigations into various drug organizations, it should be noted that none of those investigations reveal direct evidence connecting Defendant to those narcotics investigations, and further no direct evidence connecting Defendant to any crimes associated with sex trafficking.

27. Furthermore, upon information and belief, one of the witnesses that testified before the Federal Grand Jury was Defendant's ex-wife, Katrina Nigro.
28. Some of the discovery provided to Defendant by the United States Attorney's Office include recorded phone calls placed by Katrina Nigro during her confinement at the Erie County Correction Facility in 2017.
29. During these phone calls, Ms. Nigro admitted that the Town of Amherst Court ordered a two (2) doctor examination to determine whether she was mentally competent to participate in court proceedings due to her extreme falsifications during court proceedings. A copy of these calls will be provided to the Court upon request.
30. Ms. Nigro expressed her rage to several people at the Judge's statement that she had substantial concern over Ms. Nigro's mental competence.
31. Following this admission, Ms. Nigro produced a radio show, called "Beyond the Pole" from the holding center wherein she created a narrative for her listeners that she had purposely gone into the mental health unit so that she could expose to them the inner workings of the mental health unit.
32. These recorded phone conversations cast significant concerns as to Ms. Nigro's veracity and credibility.
33. It should also be noted that Ms. Nigro is currently incarcerated for vehicular assault in Erie County, a sentence which was handed down by Hon. Kenneth F. Case on August 19, 2021. Annexed hereto as Exhibit "F", please find Transcript of Proceedings, August 19, 2021.

34. During the sentencing proceeding, Ms. Nigro attempted to manipulate the Court into imposing a lesser sentence by stating that she is working with Assistant United States Attorney Joseph Trippi in the instant case. (*See* Transcript of Proceedings, August 19, 2021, page 5).
35. It has also recently been revealed that Ms. Nigro perjured herself in the Federal Grand Jury Proceedings, which record has been sealed but is available upon request. It should be noted that this information has only recently been discovered and was not known to Defendant prior to Defendant's first request to amend the terms and conditions of his release.
36. Ms. Nigro's actions clearly undermine the strength of the charges contained within the indictment for which Defendant stands charged and render any restrictions upon his freedom an infringement upon his constitution rights.
37. Defendant did not have the ability to review the hundreds of thousands of documents provided by the United States Attorney's Office on April 5, 2021 and was unaware of the perjury committed by one of the Federal Grand Jury Witnesses.
38. It is submitted that the revelation of the weakness of the evidence supporting the Federal Indictment, as well as the discovery of the perjury committed by Ms. Nigro, would constitute a change in circumstances since the Court's decision to alter terms of Defendant's release on April 14, 2021.

RISK OF FLIGHT

39. As previously discussed herein, Defendant is the owner of an extremely profitable business in Cheektowaga, New York, and is willing to provide a substantial bond to demonstrate his intent to appear at any and all court appearances.
40. Defendant is in the midst of paying considerable sums to renovate the appearance of the club, which would increase the profitability of the club. It is counterintuitive that Defendant would flee the area to evade prosecution.
41. Defendant also owns a house in Clarence, New York which is valued at over one million dollars.
42. Defendant has been regularly briefed with respect to the nature and quality of the evidence that has been provided by the United States Attorney's Office, and he has repeatedly expressed his desire to stand trial so that he may be publicly exonerated.
43. The weakness of the Government's case, coupled with Defendant's wish to prove his innocence evidences the very clear fact that he is not a flight risk.
44. Defendant has fervently maintained his innocence since the commencement of the proceedings against him.

RISK OF DANGER

45. During the arguments that took place on April 14, 2021 before the Honorable John L. Sinatra, the Government alluded to potential messages received by a potential witness from an individual who may have been with Defendant.

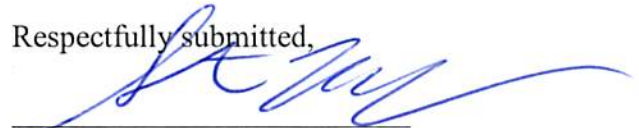
46. Specifically, the Government stated, “There has been a witness that received threats through a Facebook account during a scenario where Mr. Gerace was present with the person who was – we’re still investigating it. So, I don’t want to go too far into it. But essentially, Mr. Gerace was with a person who was Facebook messaging a witness, essentially calling the witness a snitch and things of that nature, which was perceived as a threat by the witness.” (*See* Transcript of April 14, 2021, proceedings at pages 6-7).
47. When asked for the date of this alleged incident, the Government indicated that it occurred in or around November 2019. (*See* Transcript of April 14, 2021 proceedings at pages 7).
48. The verbiage contained within this alleged message does not intimate a threat by any means, nor does it establish that the communication was at the behest of Defendant.
49. Certainly, even if proven to be true, the content in and of itself falls short of the type of clear and convincing evidence that Defendant is a danger to the public.
50. Furthermore, it is the only allegation of the occurrence of any such instance, and almost two (2) years have elapsed.
51. To date, defense counsel has not received physical evidence of this alleged threat.
52. In reviewing the discovery provided by the United States Attorney’s Office, I have seen no further evidence that Defendant has acted in any manner that could be perceived as intimidatory or violent since this alleged incident from 2019. It should be noted that this incident is alleged to have occurred prior to Defendant being named in the Indictment.
53. My office has been in contact with Defendant’s Federal Probation Officer, Michael Macaluso. He has indicated Defendant has been completely compliant with pretrial services for the past six (6) months, and that he has no concerns that Defendant poses a

risk of flight and has no objections to a change in the conditions of Defendant's release to comply with a curfew rather than home detention.

WHEREFORE, Defendant respectfully requests that the release conditions be modified to a release secured by a bond.

DATED: September 7, 2021

Respectfully submitted,



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